

### **REMARKS/ARGUMENTS**

The Examiner is thanked for the final Office Action dated November 12, 2008. The status of the application is as follows:

- Claims 1-20 are pending, and claims 14 and 15 are amended;
- The specification is objected to;
- Claims 14 and 15 are objected to;
- Claims 14 and 15 are rejected under 35 U.S.C. §102(e) as being anticipated by Bilotti et al. (US 6,622,012);
- Claims 1-13 and 19-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. in view of Kammerer et al. (US 4,492,925);
- Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. as modified by Kammerer et al., in view of Deczky (US 4,294,682);
- Claim 16 is rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. as modified by Kammerer et al., in view of Bartingale et al. (US 2003/0048102); and
- Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. as modified by Kammerer, in view of Suter et al. (US 5,323,011).

The objection and rejections are discussed below.

#### **The Objection to the Specification**

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. More particularly, the Office asserts that “computer readable medium” needs to be clearly defined in the specification.

The specification was previously amended at ¶ [0023] to state “A computer program product of the present invention is characterized by a computer program code stored on a computer readable medium for allowing a computer to execute the steps included in any of the proximity detection methods.” As such, “computer readable medium” is defined in the specification, rendering this objection moot.

**The Objection to Claims 14 and 15**

Claims 14 and 15 are objected to under 37 C.F.R. 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. **Claims 14 and 15** have been amended in accordance with the examiner's suggestions, rendering the objection thereto moot.

**The Rejection of Claims 14 and 15 under 35 U.S.C. §102(e)**

Claims 14 and 15 stand rejected under 35 U.S.C. §102(e) as being anticipated by Bilotti et al. **Claims 14 and 15** respectively depend from claims 10 and 11 and are allowable at least by virtue of their dependencies.

**The Rejection of Claims 1-13 and 19-20 under 35 U.S.C. § 103(a)**

Claims 1-13 and 19-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. in view of Kammerer et al. This rejection should be withdrawn because the combination of Bilotti et al. and Kammerer et al. does not teach or suggest all the limitations of the subject claims and, therefore, fails to establish a *prima facie* case of obviousness with respect to the subject claims.

The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed. *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (2007). MPEP §2143.

Independent **claim 1** is directed towards an apparatus that includes, *inter alia*, an inhibitor mounted in one of the members that selectively inhibits the intensity of interaction between an element in the first member and detector in the second member in response to the element being moved into the proximity of the detector; and a processor driving the inhibitor based on an output of the detector and configured to determine whether the first member is in physical proximity to the second member based on said output. The combination of Bilotti et al. and Kammerer et al. does not teach or suggest these claim aspects.

In the subject final Office Action, the Office concedes that Bilotti et al. does not disclose an inhibitor mounted in one of said members which selectively inhibits the intensity of interaction between the element and the detector in response to the element being moved into proximity of the detector. In an attempt to make up for this conceded deficiency, the Office asserts that Kammerer et al. teaches a system and method for an inhibitor mounted in one of the members which selectively inhibits the intensity of interaction between the element and the detector in response to the element being moved into the proximity of the detector (col. 1, lines 30-37 and col. 5, lines 5-15).

With more specificity, the Office asserts that the damping circuit in Kammerer et al. is the inhibitor. Applicant respectfully disagrees that this makes up for the conceded deficiencies of Bilotti et al. because the damping circuit taught in Kammerer et al. does not selectively inhibit the intensity of the interaction between the element M and the proximity switch 8 in response to the element M being moved into the proximity of the detector.

More particularly, Kammerer et al. teaches that the proximity switch 8 is provided as an element of a machine control means (abstract). Associated with the proximity switch is a control circuit 10 and a damping circuit (col. 2, lines 50-55). The control circuit 10 causes the damping circuit to damp the oscillator of the proximity switch 8 if the metal element M is moved into proximity of a feeler coil L of the proximity switch 8 (col. 3, lines 67-68 to col. 4, lines 1-8; Fig. 1). Additionally, the control circuit 10 continuously monitors the correct functioning of the proximity switch 8 by causing the damping circuit to short circuit the feeler coil L at, for example, at a timed frequency of 140 Hz and simulates damping of the oscillator of the proximity switch 8 (col. 5, lines 38-50).

However, Kammerer et al. fails to teach that the damping circuit selectively inhibits the intensity of the interaction between the element M and the proximity switch 8 in response to the element M being moved into the proximity of the proximity switch as required by claim 1. Instead, Kammerer et al. teaches that if the proximity switch 8 is damped by moving the metal element M into proximity of the proximity switch 8, the level of an output signal A of the proximity switch 8 provided to an actuating circuit 12 practically sinks to the value of 0 volts (col. 4, lines 45-60). The actuating circuit 12 is connected to a relay circuit 14 (col. 2, lines 56-57) which is further connected to a main contact circuit 16 (Fig. 1) of machine control means

(col. 2, lines 23-32). With the proximity switch 8 damped, the main contact circuit 16 of the machine control means remains closed (col. 9, lines 4-55) preventing the machine from starting or switching the machine off (col. 4, lines 66-68 to col. 5, lines 1-2).

In view of the foregoing, this rejection should be withdrawn.

Independent **claims 8, 10 and 11** contain claim aspects similar to those recited in claim 1. As such, the above discussion with respect to claim 1 applies *mutatis mutandis* to claims 8, 10 and 11, and these rejections should be withdrawn.

**Claims 2-7, 9, 5-6, 12-13 and 19-20** respectively depend from claims 1, 8, 10 and 11, and are allowable at least by virtue of their dependencies. Accordingly, these rejections should be withdrawn.

**The Rejection of Claim 5 under 35 U.S.C. 103(a)**

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. as modified by Kammerer et al., in view of Deczky. **Claim 5** depends from claim 1 and is allowable at least by virtue of dependency upon an allowable base claim. Accordingly, this rejection should be withdrawn.

**The Rejection of Claim 16 under 35 U.S.C. 103(a)**

Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. as modified by Kammerer et al., in view of Bartingale et al. Claim 16 depends from claim 1 and is allowable at least by virtue of dependency upon an allowable base claim. Accordingly, this rejection should be withdrawn.

**The Rejection of Claim 17 under 35 U.S.C. 103(a)**

Claim 17 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bilotti et al. as modified by Kammerer et al., in view of Suter et al. Claim 17 depends from claim 8 and is allowable at least by virtue of dependency on an allowable base claim. Accordingly, this rejection should be withdrawn.

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**Conclusion**

It is believed that each of the claims now in the application are distinguishable one from the other and over the prior art. Therefore, reconsideration and allowance of the claims is respectfully requested.

Respectfully submitted,

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